

COUNCIL POLICY**CURRENT**

SUBJECT: PUBLIC INFRASTRUCTURE FINANCING ASSESSMENT DISTRICTS
AND COMMUNITY FACILITIES
POLICY NO.: 800-03
EFFECTIVE DATE: October 16, 1989

BACKGROUND:

Among the growing number of methods for financing public acquisitions and improvements are the use of special assessment or Mello-Roos Community Facility districts. Such special districts may be formed under provisions of State law (primarily 1911 Act and 1913 Act improvement districts and the Mello-Roos Community Facilities District Act of 1982) or under provisions of the City's own procedural ordinances.

These financing mechanisms permit the construction of needed projects when the construction and/or financing is not otherwise feasible or desirable. They provide a vehicle for funding improvements in developing areas where they could not otherwise be constructed to meet community needs and are a means for providing necessary facilities in older urbanizing areas.

PURPOSE:

To outline a uniform policy for funding public facilities projects through special districts in the City of San Diego; covering the initiation of proceedings, information to property owners, requirements for implementing assessment and community facilities district projects, determination of assessments, and the granting of waivers.

POLICY:**I. FACILITIES TO BE FINANCED**

Facilities to be financed must be public facilities for which the City or other public entity has or will have ownership and an ongoing responsibility for operation and maintenance. Further, although permitted in the Mello-Roos Act, any request that Community Facilities Districts be utilized to finance ongoing services will be approved by the City only under unusual and compelling circumstances.

II. ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS REQUESTED BY THE GENERAL PUBLIC**A. INITIATION OF PROCEEDINGS****Assessment Districts**

It is the policy of the City of San Diego that assessment proceedings be initiated one of two ways:

1. The City Council may initiate the assessment proceedings for the following improvements:
 - a. Streets and alleys, water and sewer facilities, park improvements and other public facilities, and open space acquisition when requested by property owner petition representing 67% of the land area subject to assessment.
 - b. Underground utility conversion projects when requested by property owner petition representing 75% of the land area subject to assessment.
2. If a petition contains less than the requisite percentage of property owners signatures, assessment proceedings may be initiated by the City Council upon recommendation by the City Manager that the public interest, safety or welfare require that the proceedings be initiated. The City Manager's recommendation will be supported by a description of the nature and scope of work, the extent of the district to be assessed, allocation of costs, and the proposed method of assessment and coordination efforts with the property owners.

Community Facilities Districts

It is the policy of the City of San Diego that Mello-Roos Community Facilities Districts proceedings may commence in one of three ways:

1. The City Council may institute proceedings on its own initiative.
2. A written request may be filed with the City Council signed by two of its members.
3. A petition may be submitted signed by 10% of the registered voters or by owners of at least 10% of the land, within the proposed district.

Valid property owner petitions will be docketed for Council action no later than sixty (60) days from the date the valid petition is submitted to the City.

B. INFORMATION TO PROPERTY OWNERS

It is the policy of the City to inform each property owner by mail of the nature and scope of the proposed project, his/her estimated financial obligation under the proposed district, and the right to protest at the various hearings. Dissemination of this information shall be the responsibility of the City Manager. Generally, the dissemination of information will consist of the following:

1. During circulation of the petition, staff shall be available for any community or neighborhood meetings at the request of the property owners.
2. When a scheduled Capital Improvement Project involves joint City and property owner financing and the project is to be Council initiated in accordance with Section A, 2 of this policy, the Manager shall explain the project to all owners proposed to be assessed.
3. Following the acceptance of a property owner petition or Council initiation of a project, the Manager will, by mail, advise all property owners that are subject to an assessment and briefly explain the project and the proposed schedule for the

proceedings. It should be noted that by accepting the petition the City Council has not approved the proposed assessment district, nor indicated any type of support for the District. This can only occur at the public hearing.

4. When a major change is identified in the design, scope of work, or estimate of cost, the Manager will take appropriate steps to notify the affected property owners of the change, and the circumstances of the change.
5. Prior to the hearing on the Resolution of Intention, each property owner will be advised by mail of the pending hearings and the estimated assessment for each property.
6. If bids for the construction contract are opened after the hearing has been concluded, the Manager will, prior to the award of the contract, notify by mail all property owners whose assessments would be increased by 10% or more over the estimate presented at the hearing.
7. Sellers of any property within an assessment or community facilities district must provide a full disclosure report identifying the existence and details of this or any other special tax assessment or other liens on individual parcels to existing or future property owners.

III. INFRASTRUCTURE FINANCING OF DEVELOPER REQUIRED IMPROVEMENTS

A. POLICY CONSIDERATIONS

Council may be requested to approve the use of assessment or community facilities district procedures for financing improvements which are a requirement of development permits or agreements or tentative subdivision maps. It is the policy of the Council that these “developer-requested” districts be restricted to only those that have unusual circumstances and can satisfy the provisions of this policy. Council consideration of such requests will be made following completion of an overall feasibility analysis and in accordance with the policy guidelines outlined later in this section. Furthermore, it is the policy of the Council that these districts be submitted to the City early in the development process and be processed expeditiously for Council consideration.

Facilities to be considered for assessment or community facilities district financing are limited to those that are of extraordinary benefit to the City as defined below. Therefore, the proposed facilities must satisfy both of the following criteria:

- A1. The proposed facilities must be large in scope such as the following:
 - + Regional parks and Open Space System
 - + Major flood control projects
 - + Major water and/or sewer improvements
 - + Freeway interchanges
 - + Major (not local) streets, as well as those collector streets that are determined to have benefit outside the applicant’s development
 - + Other similar-type projects

Community Facilities District financing may also be used for the following project types:

- + Libraries, school facilities, Police area stations, or fire stations
- + Other recreational facilities of regional use
- + And certain required services; recreation programs, fire and ambulance services, flood and storm protection services

A2. The proposed assessment district must also provide some other extraordinary benefit which otherwise would not be realized through the normal subdivision process. Examples of this type of benefit would be:

- + The provision of the proposed improvements in a more timely fashion
- + facilitating a project that multiple properties/developments are responsible for providing
- + A City-adopted redevelopment project
- + Some similar benefit that the City Council finds acceptable

NOTE: The requirements of the criteria in Paragraph A2 for extraordinary benefit may be satisfied by reference to an earlier discretionary approval or plan (eg., financing plan or development agreement) which (1) contemplated the use of assessment or community facility district financing and (2) provided extraordinary benefits similar to those described in Paragraph A2.

In areas such as Otay Mesa, where the City is actively endeavoring to facilitate the development of employment opportunities or for projects that involve achieving a significant policy goal of the Council, the proposed improvements need not satisfy the above criteria, assessment district proceedings may be initiated if the associated developments satisfy the financial criteria outlined in this policy.

Public facilities bond funds may be utilized to acquire developer improvements after they have been constructed by the developer. Such funding shall be identified as “acquisition-type districts.” Assessment districts in which the City would act as the Project Manager for construction (construction-type district) may not be utilized to construct Developer Improvements which the developer is already obligated to construct. Construction-type districts pose a severe and unbudgeted impact on engineering and administrative staff. The transfer of responsibility for construction of facilities further represents a transfer from the developer to the City of potential financial and/or other liabilities.

The following additional criteria shall apply to assessment or community facilities districts:

1. The value-to-lien ratio for all properties, after improvements are in place, within the district must be at least 3:1.

In determining the value to lien ratio either assessed values for individual properties will be obtained from the County of San Diego Assessor's Office or the City will utilize an appraisal prepared by an independent appraiser under contract to the City. In those instances where the ratio of a lot or lots are less than 3:1, credit enhancements must be provided to the satisfaction of the City. These enhancements may include, but are not limited to, letters of credit or appropriate assurance.

2. The City shall determine how the spread of assessments or special taxes are made to those properties within the distance boundaries.
3. As a general rule for residential projects, total taxes and special assessments collected through the property tax bill should not exceed 2% of the assessed value of the property, including improvements. (This 2% includes allowances for potential City ad valorem taxes, see 6 below).
4. The City may require district proponents to enter into an agreement whereby they agree to be responsible for assuring the payment of assessments of a parcel or parcels that are found to be of concern. This would not be applicable after the parcel or parcels in question are themselves developed to their ultimate use.
5. All of the City's administrative costs, both before and after the debt is issued, shall be included in and compensated by the district. These expenses will include the cost of audited statements of expenditures for acquisition districts. Expenses not chargeable to the district shall be borne by the developer.
6. The City will consider its total indebtedness at the time it evaluates requests for assessment or community facilities districts. The City retains the right to withhold financing if it determines such financing to be detrimental to its debt position.
7. The City must be satisfied that the project itself is financially feasible.

B. INITIATION OF PROCEEDINGS - ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS

The following sequential steps shall occur:

1. The developer shall complete the "Application For Public Financing" form and make a deposit at the office of the City Engineer sufficient to

cover all of the City's costs of analyzing the project as described below. This application shall be submitted at least ten months in advance of the developer's forecasted date of entering into sales contracts with buyers of the subdivided property.

2. The City will then assess the extent and type of the proposed improvement. Also, the amount of potential debt to be issued by the City on the specific project or project area will be evaluated.
3. The City's special assessment and community facilities district team consisting of the Financial Management Director, City Auditor, City Engineer, City Treasurer, City Attorney or their designated representatives, shall obtain an analysis as to the overall feasibility of the developer's project. The developer shall provide any and all information requested by the City.

To accomplish this analysis the City shall likely retain independent, qualified consultants who will report to and receive direction from the City for the following purposes:

- a. A financial advisor shall obtain and review the audited financial statements of all landowners who own more than 20% of the land contained within the proposed assessment district in order to investigate the developer(s) financial strength and experience in large scale projects. The financial advisor shall investigate and report on all liens against the property in question, the value-to-lien ratio, and other financial aspects of the project. If the value-to-lien is less than 3:1, an analysis of project enhancements shall be accomplished. Finally, this advisor will consider economic factors such as market absorption and how it relates to the project's overall feasibility.
- b. An assessment engineering consultant who shall review the project plans, specifications, and estimate as well as analyze how the assessments/taxes will be spread. This will include determining to whom the costs of the project should be assessed.
- c. In the case of community facilities districts, a special tax consultant may be required in place of the assessment engineer for the development of the special tax formula.
- d. A special bond counsel to review legal aspects of the project and to render advice relative to procedural issues.

It should be noted that by conducting this analysis the City has in no way committed itself to allowing the assessment district. This commitment can only be made by the Council.

4. Once the above analysis is completed, the property owner(s) may file a petition requesting an assessment or community facilities district at the office of the City Engineer.
5. All of the above steps are only preliminary to the City Council's actual consideration of a proposed assessment district. The City Engineer shall then process the petition for City Council consideration, along with consultant agreements for the assessment or community facilities district proceedings, and a Manager's recommendation outlining the findings of the analysis.

If the City Council accepts the petition, the Resolution of Intention and public hearing will then be held at the appropriate times with each property owner in the proposed district being advised by mail of the hearing and the estimated assessment or special tax for each property. It should be noted that the public hearing will represent the City Council's actual decision on a proposed Assessment District.

6. While the applicant may request that a type of special district be utilized on a proposed project, the City Council shall have the final authority as to which type will be used.

The following sections apply both to assessment districts requested by the general public and developer-requested assessment districts.

C. ASSESSMENT DISTRICTS AND METHODS OF ASSESSMENT

The State Assessment Acts require that the costs of the improvement or acquisition be apportioned to the lands in the district in proportion to the benefits received. In establishing benefit and apportioning costs, certain general guidelines may be used to assure conformity between similar districts and between similarly benefitted properties within a district. These guidelines apply to the areas of benefit, allocation of costs and apportionment of assessments.

1. Areas of Benefit

The area of benefit is delineated by the District's boundaries and includes properties which benefit from the improvement or acquisition. Among the typical areas of benefit encountered are the following:

- a. Local (Not Applicable to Developer Projects) and Collector Streets: The area of benefit normally includes properties which

front on the proposed improvement or are located within an area approximately one-half block distance on either side of the improvement.

- b. Major Street or Arterial Projects: The area of benefit normally includes all properties which front on the proposed improvement and extends to approximately one-half the distance to the next parallel major or arterial street but may be modified by such topographical features as canyons.
- c. Utilities (Water, Sewer, Electrical, Telephone, etc.): The area of benefit normally includes all properties which are to be ultimately served from the facility.
- d. Population-Based Parks (Neighborhood or Community Park Facilities): The area of benefit coincides with the Park Service District boundaries.
- e. Open Space (Park Reserve): The area of benefit as normally established includes all properties to be benefitted by the open space acquisition, with consideration of proximity, visibility, access, and topography.

2. Allocation of Costs

a. City Contributions

Certain public improvements or acquisition provide a local benefit, a community benefit, and a general City benefit. In those instances where funding is available, the City Council may elect to provide a portion of the project funding attributable to a general City benefit which exceeds the special local or community benefit. Examples of such general City benefit are traffic signals that benefit an area much larger and less defined than the proposed district or off-site improvements that are included in the project at the convenience of the City but which do not especially benefit properties in the district. Such allocation of City funding is set forth in the following other Council Policies.

(1) Street Improvements 200-01

(2) Water and Sewer 400-06 and 400-07

(3) Parks 700-07

(4) Open Space (Park Reserve) 700-31

(5) Storm Drains 800-04

b. Assessments Against City Owned Land

Assessments districts often include within their boundaries parcels of land owned by the City. Such City-owned land may be the site of existing or proposed public facilities, such as libraries, fire stations, or parks or may be undeveloped awaiting either improvement or sale. In each instance, the measure of benefit that would accrue to the City-owned parcels is to be critically evaluated in light of the City's ability to pay, as well as fairness to the other properties in the district. Whenever City-owned property is included within the boundaries of an assessment district, the docket supporting information provided to Council at the Resolution of Intention shall describe the City-owned land, its present and proposed uses, and what share of project costs, if any, that have been assigned to the City.

3. Apportionment of Assessments

The method used for measuring benefit should consider measurable factors which describe and reflect the physical features of the property, including the area of the parcel, frontage on the improvement, proximity to the improvement, and ability to gain access to the improvements.

Appropriate adjustments to the basic method for measuring benefit should be employed to reflect unique situations such as double frontage lots, corner lots, or irregularly shaped parcels. The following are typical methods used for the apportionment of costs for various types of improvements:

- a. Local (Not Applicable to Developer Projects) and Collector Streets and Utilities (including Pavement, Curb, Sidewalk, Water and Sewer Facilities, Street Lights, Local drainage Facilities and Rights-of-way): These costs are normally apportioned on the basis of frontage, area, or a combination thereof.
- b. Major Streets and Arterials: Abutting properties should receive an allocation of costs similar to that for an equivalent local street. Costs not absorbed by the abutting properties should be uniformly distributed to the balance of benefiting properties on the basis of area or other measurable factors, such as proximity and accessibility or a combination thereof.

- c. Population-Based Park Improvements, Open Space (Park Reserve) Acquisition and Under- ground Conversions:
Apportionment of the assessments for these types of improvements is based on a property unit method of spread with zones of benefit related to proximity and/or topographic features of the parcels. Property unit is generally expressed in terms of equivalent dwelling units.

D. COMMUNITY FACILITIES DISTRICTS AND ESTABLISHMENT OF SPECIAL TAX

The Mello-Roos Community Facilities Act provides that funds to repay the debt incurred by the sale of bonds will be derived from a special tax formula applied within the district. The special tax formula may take into consideration benefit to each parcel, as well as City policy and other local circumstances. Ultimately, the main objective of the formula is that it be considered reasonable by the City Council. In apportionment of this special tax, the City Council may use area of benefit definitions similar to those utilized in Section C 1 above, but it is not required by law.

E. IMPROVEMENTS TO COVER AN ENTIRE BLOCK

*It is the policy of the City Council that Assessment District projects shall cover at least one entire block and several blocks if possible.

F. PROJECT TIMETABLE

It shall be the responsibility of City staff to implement assessment district projects in a timely manner in order to retain the active support of the petitioners and to minimize the affects of inflation on project costs. No more than twelve months shall be consumed between Council acceptance of the petition and completion of the right-of-way acquisition and design phase nor more than 18 months between petition acceptance and the public hearing. At the end of each fiscal year, staff shall provide Council with a status report on assessment district activity, including compliance with this section of the policy.

G. RETENTION OF CONSTRUCTION CONTRACTOR

For Community Facilities Districts in which the Resolution of Formation has taken place, the developer shall adhere strictly to the following bid process:

1. Upon approval of the bid package by the City, the developer shall advertise for bids in the appropriate newspapers and periodicals.
2. Contractors interested in submitting sealed bids for the project will be directed to do so on a specific date and within a time period (i.e. 9:00

a.m. to 11:00 a.m.) at the developer's place of business. During this specified time period, the City Street Superintendent, or designated representative, shall be in attendance to receive the bid packages.

3. The bid packages will then be opened immediately after the close of the specified time period in the presence of the City's Street Superintendent. The developer will then begin the process of executing a contract with the lowest responsible bidder. It should be noted that this lowest responsible bidder will be expected to satisfy the City of San Diego equal opportunity goals.

For Community Facilities Districts in which the Resolution of Formation has not taken place and all acquisition assessment districts, the following procedure shall be followed:

1. Using a bid package approved by the City, the developer shall secure at least three qualified bids for the work to be done. The project shall then be awarded to the lowest responsible bidder. If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the City. The City may allow this if the applicant can provide adequate justification.

Any extra work or charges during construction shall be justified and documented. The City shall retain the right to be in attendance to receive the bid package, or to inspect all bids and change orders.

2. When all the work has been completed to the satisfaction of the City, the developer shall submit to the City verification of payment, in a form acceptable to the City, for the construction of the project, including documentation that the contractor has satisfied the City of San Diego's minority- and women-owned business enterprise policies.

H. DISCLOSURE STATEMENT

For developer improvements, the developer shall prepare and obtain approval from the City a statement and report notifying any prospective property owners of the existence or proposal of special assessments or taxes on the property. This "Disclosure Statement" shall be issued to and signed by the prospective buyer prior to any commitment by the buyer to purchase the property. In order to quantify the assessment or special tax, residential property shall follow a procedure where the home buyer is given two options. The first option will list the assessment or special tax "buy out" amount to be paid at the close of escrow. The second option will list the annual payments to be included with property tax payments for each year of the assessment term and the associated total of these payments.

I. INCIDENTAL COSTS

COUNCIL POLICY**CURRENT**

It is the policy of the City of San Diego that the incidental costs, which include engineering, advertising, printing, clerical service, inspection, attorney's fees, etc., be recovered and apportioned to the entire district in proportion to the assessments for the work. Incidental costs will be computed according to the following schedule:

1.	<u>Construction Contract Costs</u>	<u>Total Incidental Costs</u>
	\$ 10,000	\$ 5,000
	25,000	9,000
	50,000	16,000
	100,000	30,000
	200,000	56,000
	300,000	76,000
	400,000	92,000
	500,000	106,000
	1,000,000	186,000
2.	<u>Maintenance Projects</u>	
	(no construction or acquisition)	8% of project costs for administration

The incidental costs may be increased from the schedule shown in order to cover special services or costs not normally incurred, such as right-of-way acquisition, and fees for consulting attorneys, engineers or appraisers.

In the case of acquisition projects (park reserve or open space), the incidental costs shall consist of the actual cost incurred in bringing the project to the public hearing, plus an estimate of costs to be incurred following the public hearing such as the service of bonds by the Treasurer's Office and expense incurred in acquisition.

* Extracted from Council Policy 800-02

NOTE: Council Policy 800-02 is deleted by the implementation of this policy.

HISTORY:

Adopted by Resolution R-183351 04/06/1965
 Amended by Resolution R-185734 12/14/1965
 Amended by Resolution R-188027 08/09/1966
 Amended by Resolution R-193345 04/04/1968
 Amended by Resolution R-212402 01/09/1975

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

Amended by Resolution R-258118 03/21/1983
Amended by Resolution R-274571 10/16/1989